

**Washington et al. v. U.S. Department of Transportation, et al.**  
**Motion for Preliminary Injunction**

**Plaintiff States' Statutory Addendum**

**Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021)**  
**Division J, Title VIII, Paragraph 2**  
**Federal Highway Administration, Highway Infrastructure Program**  
**135 Stat. 429, 1421-1426**

[135 Stat. at 1421] (2) \$5,000,000,000, to remain available until expended for amounts made available for each of fiscal years 2022 through 2026, shall be to carry out a National Electric Vehicle Formula Program (referred to in this paragraph in this Act as the “Program”) to provide funding to States to strategically deploy electric vehicle charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability:

**Proviso 1**

*Provided*, That funds made available under this paragraph in this Act shall be used for:

- (1) the acquisition and installation of electric vehicle charging infrastructure to serve as a catalyst for the deployment of such infrastructure and to connect it to a network to facilitate data collection, access, and reliability;
- (2) proper operation and maintenance of electric vehicle charging infrastructure; and
- (3) data sharing [135 Stat. at 1422] about electric vehicle charging infrastructure to ensure the long-term success of investments made under this paragraph in this Act:

**Proviso 2**

*Provided further*, That for each of fiscal years 2022 through 2026, the Secretary shall distribute among the States the funds made available under this paragraph in this Act so that each State receives an amount equal to the proportion that the total base apportionment or allocation determined for the State under subsection (c) of section 104 or under section 165 of title 23, United States Code, bears to the total base apportionments or allocations for all States under subsection (c) of section 104 and section 165 of title 23, United States Code:

**Proviso 3**

*Provided further*, That the Federal share payable for the cost of a project funded under this paragraph in this Act shall be 80 percent:

**Proviso 4**

*Provided further,* That the Secretary shall establish a deadline by which a State shall provide a plan to the Secretary, in such form and such manner that the Secretary requires (to be made available on the Department's website), describing how such State intends to use funds distributed to the State under this paragraph in this Act to carry out the Program for each fiscal year in which funds are made available:

**Proviso 5**

*Provided further,* That, not later than 120 days after the deadline established in the preceding proviso, the Secretary shall make publicly available on the Department's website and submit to the House Committee on Transportation and Infrastructure, the Senate Committee on Environment and Public Works, and the House and Senate Committees on Appropriations, a report summarizing each plan submitted by a State to the Department of Transportation and an assessment of how such plans make progress towards the establishment of a national network of electric vehicle charging infrastructure:

**Proviso 6**

*Provided further,* That if a State fails to submit the plan required under the fourth proviso of this paragraph in this Act to the Secretary by the date specified in such proviso, or if the Secretary determines a State has not taken action to carry out its plan, the Secretary may withhold or withdraw, as applicable, funds made available under this paragraph in this Act for the fiscal year from the State and award such funds on a competitive basis to local jurisdictions within the State for use on projects that meet the eligibility requirements under this paragraph in this Act:

**Proviso 7**

*Provided further,* That, prior to the Secretary making a determination that a State has not taken actions to carry out its plan, the Secretary shall notify the State, consult with the State, and identify actions that can be taken to rectify concerns, and provide at least 90 days for the State to rectify concerns and take action to carry out its plan:

**Proviso 8**

*Provided further,* That the Secretary shall provide notice to a State on the intent to withhold or withdraw funds not less than 60 days before withholding or withdrawing any funds, during which time the States shall have an opportunity to appeal a decision to withhold or withdraw funds directly to the Secretary:

**Proviso 9**

*Provided further,* That if the Secretary determines that any funds withheld or withdrawn from a State under the preceding proviso cannot be fully awarded to local jurisdictions within the State under the preceding proviso in a manner consistent with the purpose of this paragraph in this Act,

any such funds remaining shall be distributed among other States (except States for which funds for that fiscal year [135 Stat. at 1423] have been withheld or withdrawn under the preceding proviso) in the same manner as funds distributed for that fiscal year under the second proviso under this paragraph in this Act, except that the ratio shall be adjusted to exclude States for which funds for that fiscal year have been withheld or withdrawn under the preceding proviso:

**Proviso 10**

*Provided further*, That funds distributed under the preceding proviso shall only be available to carry out this paragraph in this Act:

**Proviso 11**

*Provided further*, That funds made available under this paragraph in this Act may be used to contract with a private entity for acquisition and installation of publicly accessible electric vehicle charging infrastructure and the private entity may pay the non-Federal share of the cost of a project funded under this paragraph:

**Proviso 12**

*Provided further*, That funds made available under this paragraph in this Act shall be for projects directly related to the charging of a vehicle and only for electric vehicle charging infrastructure that is open to the general public or to authorized commercial motor vehicle operators from more than one company:

**Proviso 13**

*Provided further*, That any electric vehicle charging infrastructure acquired or installed with funds made available under this paragraph in this Act shall be located along a designated alternative fuel corridor:

**Proviso 14**

*Provided further*, That no later than 90 days after the date of enactment of this Act, the Secretary of Transportation, in coordination with the Secretary of Energy, shall develop guidance for States and localities to strategically deploy electric vehicle charging infrastructure, consistent with this paragraph in this Act:

**Proviso 15**

*Provided further*, That the Secretary of Transportation, in coordination with the Secretary of Energy, shall consider the following in developing the guidance described in the preceding proviso:

- (1) the distance between publicly available electric vehicle charging infrastructure;

- (2) connections to the electric grid, including electric distribution upgrades; vehicle-to-grid integration, including smart charge management or other protocols that can minimize impacts to the grid; alignment with electric distribution interconnection processes, and plans for the use of renewable energy sources to power charging and energy storage;
- (3) the proximity of existing off-highway travel centers, fuel retailers, and small businesses to electric vehicle charging infrastructure acquired or funded under this paragraph in this Act;
- (4) the need for publicly available electric vehicle charging infrastructure in rural corridors and underserved or disadvantaged communities;
- (5) the long-term operation and maintenance of publicly available electric vehicle charging infrastructure to avoid stranded assets and protect the investment of public funds in that infrastructure;
- (6) existing private, national, State, local, Tribal, and territorial government electric vehicle charging infrastructure programs and incentives;
- (7) fostering enhanced, coordinated, public-private or private investment in electric vehicle charging infrastructure;
- (8) meeting current and anticipated market demands for electric vehicle charging infrastructure, including with regard to power levels and charging speed, and minimizing the time to charge current and anticipated vehicles; and
- (9) any other factors, as determined by the Secretary:

#### **Proviso 16**

*Provided further*, That if a State determines, and the Secretary certifies, that the designated alternative fuel corridors in the States are fully built out, then the State may use funds provided [135 Stat. at 1424] under this paragraph for electric vehicle charging infrastructure on any public road or in other publically accessible locations, such as parking facilities at public buildings, public schools, and public parks, or in publically accessible parking facilities owned or managed by a private entity:

#### **Proviso 17**

*Provided further*, That subject to the minimum standards and requirements established under the following proviso, funds made available under this paragraph in this Act may be used for:

- (1) the acquisition or installation of electric vehicle charging infrastructure;
- (2) operating assistance for costs allocable to operating and maintaining electric vehicle charging infrastructure acquired or installed under this paragraph in this Act, for a period not to exceed five years;

- (3) the acquisition or installation of traffic control devices located in the right-of-way to provide directional information to electric vehicle charging infrastructure acquired, installed, or operated under this paragraph in this Act;
- (4) on-premises signs to provide information about electric vehicle charging infrastructure acquired, installed, or operated under this paragraph in this Act;
- (5) development phase activities relating to the acquisition or installation of electric vehicle charging infrastructure, as determined by the Secretary; or
- (6) mapping and analysis activities to evaluate, in an area in the United States designated by the eligible entity, the locations of current and future electric vehicle owners, to forecast commuting and travel patterns of electric vehicles and the quantity of electricity required to serve electric vehicle charging stations, to estimate the concentrations of electric vehicle charging stations to meet the needs of current and future electric vehicle drivers, to estimate future needs for electric vehicle charging stations to support the adoption and use of electric vehicles in shared mobility solutions, such as micro-transit and transportation network companies, and to develop an analytical model to allow a city, county, or other political subdivision of a State or a local agency to compare and evaluate different adoption and use scenarios for electric vehicles and electric vehicle charging stations:

### **Proviso 18**

*Provided further*, That not later than 180 days after the date of enactment of this Act, the Secretary of Transportation, in coordination with the Secretary of Energy and in consultation with relevant stakeholders, shall, as appropriate, develop minimum standards and requirements related to:

- (1) the installation, operation, or maintenance by qualified technicians of electric vehicle charging infrastructure under this paragraph in this Act;
- (2) the interoperability of electric vehicle charging infrastructure under this paragraph in this Act;
- (3) any traffic control device or on-premises sign acquired, installed, or operated under this paragraph in this Act;
- (4) any data requested by the Secretary related to a project funded under this paragraph in this Act, including the format and schedule for the submission of such data;
- (5) network connectivity of electric vehicle charging infrastructure; and
- (6) information on publicly available electric vehicle charging infrastructure locations, pricing, real-time availability, and accessibility through mapping applications:

**Proviso 19**

*Provided further,* That not later than 1 year after the date of enactment of this Act, the Secretary shall designate national electric vehicle charging corridors that identify the near- and long-term need for, and the location of, electric vehicle charging [135 Stat. at 1425] infrastructure to support freight and goods movement at strategic locations along major national highways, the National Highway Freight Network established under section 167 of title 23, United States Code, and goods movement locations including ports, intermodal centers, and warehousing locations:

**Proviso 20**

*Provided further,* That the report issued under section 151(e) of title 23, United States Code, shall include a description of efforts to achieve strategic deployment of electric vehicle charging infrastructure in electric vehicle charging corridors, including progress on the implementation of the Program under this paragraph in this Act:

**Proviso 21**

*Provided further,* That, for fiscal year 2022, before distributing funds made available under this paragraph in this Act to States, the Secretary shall set aside from funds made available under this paragraph in this Act to carry out this paragraph in this Act not more than \$300,000,000, which may be transferred to the Joint Office described in the twenty-fourth proviso of this paragraph in this Act, to establish such Joint Office and carry out its duties under this paragraph in this Act:

**Proviso 22**

*Provided further,* That, for each of fiscal years 2022 through 2026, after setting aside funds under the preceding proviso, and before distributing funds made available under this paragraph in this Act to States, the Secretary shall set aside from funds made available under this paragraph in this Act for such fiscal year to carry out this paragraph in this Act 10 percent for grants to States or localities that require additional assistance to strategically deploy electric vehicle charging infrastructure:

**Proviso 23**

*Provided further,* That not later than 1 year after the date of enactment of this Act, the Secretary shall establish a grant program to administer to States or localities the amounts set aside under the preceding proviso:

**Proviso 24**

*Provided further,* That, except as otherwise specified under this paragraph in this Act, funds made available under this paragraph in this Act, other than funds transferred under the nineteenth proviso of this paragraph in this Act to the Joint Office, shall be administered as if apportioned under chapter 1 of title 23, United States Code:

**Proviso 25**

*Provided further*, That funds made available under this paragraph in this Act shall not be transferable under section 126 of title 23, United States Code:

**Proviso 26**

*Provided further*, That there is established a Joint Office of Energy and Transportation (referred to in this paragraph in this Act as the “Joint Office”) in the Department of Transportation and the Department of Energy to study, plan, coordinate, and implement issues of joint concern between the two agencies, which shall include:

- (1) technical assistance related to the deployment, operation, and maintenance of zero emission vehicle charging and refueling infrastructure, renewable energy generation, vehicle-to-grid integration, including microgrids, and related programs and policies;
- (2) data sharing of installation, maintenance, and utilization in order to continue to inform the network build out of zero emission vehicle charging and refueling infrastructure;
- (3) performance of a national and regionalized study of zero emission vehicle charging and refueling infrastructure needs and deployment factors, to support grants for community resilience and electric vehicle integration;
- (4) development and deployment of training and certification programs;
- (5) establishment and implementation of a program to promote renewable **[135 Stat. at 1426]** energy generation, storage, and grid integration, including microgrids, in transportation rights-of-way;
- (6) studying, planning, and funding for high-voltage distributed current infrastructure in the rights-of way of the Interstate System and for constructing high-voltage and or medium-voltage transmission pilots in the rights-of-way of the Interstate System;
- (7) research, strategies, and actions under the Departments' statutory authorities to reduce transportation-related emissions and mitigate the effects of climate change;
- (8) development of a streamlined utility accommodations policy for high-voltage and medium-voltage transmission in the transportation right-of-way; and
- (9) any other issues that the Secretary of Transportation and the Secretary of Energy identify as issues of joint interest:

**Proviso 27**

*Provided further*, That the Joint Office of Energy and Transportation shall establish and maintain a public database, accessible on both Department of Transportation and Department of Energy websites, that includes: (1) information maintained on the Alternative Fuel Data Center by the

Office of Energy Efficiency and Renewable Energy of the Department of Energy with respect to the locations of electric vehicle charging stations; (2) potential locations for electric vehicle charging stations identified by eligible entities through the program; and (3) the ability to sort generated results by various characteristics with respect to electric vehicle charging stations, including location, in terms of the State, city, or county; status (operational, under construction, or planned); and charging type, in terms of Level 2 charging equipment or Direct Current Fast Charging Equipment:

**Proviso 28**

*Provided further*, That the Secretary of Transportation and the Secretary of Energy shall cooperatively administer the Joint Office consistent with this paragraph in this Act:

**Proviso 29**

*Provided further*, That the Secretary of Transportation and the Secretary of Energy may transfer funds between the Department of Transportation and the Department of Energy from funds provided under this paragraph in this Act to establish the Joint Office and to carry out its duties under this paragraph in this Act and any such funds or portions thereof transferred to the Joint Office may be transferred back to and merged with this account:

**Proviso 30**

*Provided further*, That the Secretary of Transportation and the Secretary of Energy shall notify the House and Senate Committees on Appropriations not less than 15 days prior to transferring any funds under the previous proviso:

**Proviso 31**

*Provided further*, That for the purposes of funds made available under this paragraph in this Act: (1) the term “State” has the meaning given such term in section 101 of title 23, United States Code; and (2) the term “Federal-aid highway” means a public highway eligible for assistance under chapter 1 of title 23, United States Code, other than a highway functionally classified as a local road or rural minor collector:

**Proviso 32**

*Provided further*, That, of the funds made available in this division or division A of this Act for the Federal lands transportation program under section 203 of title 23, United States Code, not less than \$7,000,000 shall be made available for each Federal agency otherwise eligible to compete for amounts made available under that section for each of fiscal years 2022 through 2026;